

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36471

STATE OF IDAHO,	)	2010 Unpublished Opinion No. 422
	)	
Plaintiff-Respondent,	)	Filed: April 8, 2010
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
DAVID M. ESTES,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Second Judicial District, State of Idaho, Clearwater County. Hon. John R. Stegner, District Judge; Hon. Randall W. Robinson, Magistrate.

District court's memorandum decision and order affirming magistrate court's judgment of conviction, affirmed.

David M. Estes, Lewiston, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

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GUTIERREZ, Judge

David M. Estes appeals from the district court's intermediate appellate memorandum decision and order affirming his conviction for speeding. We affirm.

**I.**

**FACTS AND PROCEDURE**

On March 9, 2008, at approximately 7:20 p.m., a City of Orofino police officer was traveling on State Highway 12 in a 50 m.p.h. zone when she observed Estes' car traveling in the opposite direction at a speed she visually estimated to be 60 m.p.h. The officer activated her patrol vehicle's radar device which indicated that Estes was traveling at 63 m.p.h. The officer instigated a stop of Estes' vehicle and issued him a citation for exceeding the speed limit, Idaho Code § 49-654(2).

At a magistrate court trial on the citation, the officer testified as to her visual estimation of Estes' speed as well as the radar device reading of his speed. As to the accuracy of the radar the court admitted as Exhibit 1, over Estes' objection, a "certificate of accuracy." The magistrate found Estes guilty of speeding and imposed a \$75.00 fine.

Estes timely appealed to the district court, contending that the magistrate had improperly admitted Exhibit 1, because it was hearsay not admissible under any exception. In his reply brief, he also contended that the officer's visual estimation of speed alone was not sufficient to sustain a conviction for speeding. The district court agreed that Exhibit 1 was improperly admitted, but affirmed Estes' conviction after concluding that the officer's visual estimation of Estes' speed was sufficient to establish, beyond a reasonable doubt, that Estes was guilty of speeding. The district court also concluded that even absent Exhibit 1, the officer's testimony was sufficient to establish the foundational requirements for the admission of the radar results. Estes now appeals.

## **II. ANALYSIS**

Estes raises two issues on appeal. First, he argues that the district court erred when it determined that the officer's visual estimation of speed was sufficient to convict him of speeding. He also contends that the court "improperly rel[ied] on the testimony of the officer to verify the accuracy and maintenance of the radar equipment after disallowing a certificate of accuracy and maintenance made by a seller of the equipment."

On review of a decision of the district court, rendered in its appellate capacity, we review the decision of the district court directly. *State v. DeWitt*, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008). We examine the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. *Id.* If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure. *Id.*

We need not decide whether the officer's visual estimation of speed alone was sufficient to convict Estes of speeding, because we conclude that there was sufficient evidence presented to provide foundation for admission of the radar reading, even without considering the certificate of

accuracy.<sup>1</sup> When a radar device is used to determine whether a defendant is driving in excess of the maximum speed limit, the proper use and accuracy of the device in question must be established by the state in order to introduce the evidence at trial. *State v. Kane*, 122 Idaho 623, 624-25, 836 P.2d 569, 570-71 (Ct. App. 1992). *See also State v. Williamson*, 144 Idaho 597, 600, 166 P.3d 387, 390 (Ct. App. 2007) (applying the *Kane* holding to the use of laser speed detection devices). Therefore, in each speeding prosecution that seeks to introduce radar evidence, the state must prove that the officer was qualified to operate the device, that the unit was properly maintained, and that it was used correctly. *Id.*

The officer in this case testified that she had been trained in the use of speed detection radar equipment, had used tuning forks in accordance with her training at the POST academy to check the calibration on the radar at the beginning of her shift, and that her test indicated the device was working properly. She also testified that she had used the device correctly, noting that she had focused the radar on Estes' vehicle, had seen no intervening obstructions or items that could have caused interference, and that she believed her radar reading as to Estes' speed was accurate. She further testified that on November 17, 2008, she had taken her patrol car to a radar technician to have the radar unit checked and certified, that the technician had proceeded to check the radar unit and the tuning forks, and that she had witnessed him putting a recertification sticker on the radar device.

Similar testimony by officers using radar and laser speed detection devices in *Kane* and *Williamson*, respectively, was found to be sufficient to establish that the officer operating the device was qualified to do so, that the device had been properly maintained, and that it had been used correctly. *See Williamson*, 144 Idaho at 600, 166 P.3d at 390 (noting that if it were to reach the issue on appeal, proper foundation was established where the officer testified that he was

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<sup>1</sup> Estes is correct that the district court based its decision affirming the magistrate court on its conclusion that the officer's visual estimation of speed alone was sufficient to support Estes' conviction, and that it noted that it was "unnecessary" for the court to address the foundation issue and only proceeded to because the case may be appealed and such a finding may be "helpful to a reviewing court." Estes is incorrect, however, to the extent that he contends that the district court erred in addressing the second issue. In addition, we are not bound to affirm the conviction on the same basis as the district court. *See State v. Pierce*, 107 Idaho 96, 102, 685 P.2d 837, 843 (Ct. App. 1984) (holding that where a ruling in a criminal case is correct, though based upon an incorrect reason, it still may be sustained upon the proper legal theory).

certified in the use of laser speed detection, the laser had been calibrated by the city maintenance shops, he had tested the device on the day in question to ensure it was working correctly, that he had used the device correctly in determining Williamson's speed, and specified the method he had used); *Kane*, 122 Idaho at 624-25, 836 P.2d at 570-71 (holding that foundation for admission of radar reading was established where officer testified that he was qualified to operate the machine, that the unit was properly maintained, and that it was used properly in the instance at issue).

Estes contends that because the officer is not an "electrical engineer," because she had only observed a prior recertification of the radar unit by another person at the radar shop and could not testify as to who this person was or what his qualifications were, and because the equipment still could have been "inaccurate" in spite of the officer's field tests of the device, sufficient foundation was not established for admission of the radar reading. However, these conditions that Estes advances are not the standard under *Kane*--and as we indicated above, the officer testified as to each of the showings that *Kane* required. We conclude that there was sufficient foundation upon which to admit evidence of the radar reading. In addition, since Estes does not contend that there was insufficient evidence to support his conviction if both the officer's visual estimation of his speed and the radar reading are taken into account, we affirm his conviction for speeding.

Chief Judge LANSING and Judge MELANSON **CONCUR.**